IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 418

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

JONES & LAUGHLIN STEEL CORPORATION,
Respondent.

BRIEF AMICUS CURIAE FOR PACKARD MOTOR CAR COMPANY

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BRIEF AMICUS CURIAE FOR PACKARD MOTOR CAR COMPANY

Having first obtained the written consent of all parties (filed herewith) as required by Section 9 of Rule 27, the Packard Motor Car Company, by Arnold F. Bunge, its attorney, files this brief as amicus curiae.

On September 30, 1946, in Case No. 8-C-1865, entitled, *In the Matter of Packard Motor Car Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 12 (CIO)*, 71 N. L. R. B. No. 13, the National Labor Relations Board issued its decision and order finding the Packard Motor Car

Company guilty of an unfair labor practice for refusing to bargain with a union claiming to represent its plant protection employees under circumstances similar to those in the case at bar. In that case the trial examiner, in his intermediate report, specifically found that his decision and recommendations were contrary to the decision of the Sixth Circuit Court of Appeals in the present case but refused to follow the Court decision because the Board had not acquiesced therein.

By reason of the foregoing, Packard Motor Car Company has an interest in the questions of law involved in this case and, therefore, requested the parties for their written consent to the filing of this brief.

Official Reports of Lower Court Opinions

On May 3, 1943, the National Labor Relations Board issued its decision and direction of election, in Case No. R-1543, directing that an election be held at the Jones & Laughlin Steel Corporation, Otis Works, Cleveland, Ohio, among all patrolmen, watchmen, and firemen, including dump laborers, with certain exclusions.

The various Board and Court proceedings in this case are officially reported as follows:

49 N. L. R. B. 390 (1943) Board decision and direction of election;

53 N. L. R. B. 1046 (1943) Board decision and order in unfair labor practice case;

146 F. (2d) 718 (C. C. A. 6, 1944) Court judgment denying enforcement of Board order;

325 U. S. 838 (1945) Court order granting certiorari, vacating judgment and remanding case for further consideration of alleged changed circumstances;

326 U. S. 804 (1945) Rehearing denied;
154 F. (2d) 932 (C. C. A. 6, 1946) Court judgment again denying enforcement of Board order.

On December 23, 1946 on petition of the National Labor Relations Board this Court granted certiorari. —— U. S. ——; 67 S. Ct. 479.

Statement of Case

This case is a proceeding brought here by the petition of the National Labor Relations Board seeking review of a judgment of the Sixth Circuit Court of Appeals denying the petition of the Board for enforcement of an order directing Jones & Laughlin Steel Corporation to bargain with United Steel Workers of America (CIO) as the exclusive representative of all patrolmen, watchmen, and firemen, including dump laborers, employed by it at its Otis Works, but excluding lieutenants, captains and supervisors.

The record shows that at the time of the original hearing the Jones & Laughlin Steel Corporation was engaged in war production (R. 4) and employed a plant protection force consisting of a captain, (R. 4, 10) eight police lieutenants, (R. 4, 10) fifty-eight patrolmen (R. 4, 8), two fire captains (R. 4, 10), two firemen (R. 4, 9) and two dump laborers (R. 4, 9) who also perform plant protection duties.

At the time of the hearing before the Board, the plant protection force were all armed and uniformed members of the United States Army Auxiliary Military Police (R. 6) under the direct supervision and jurisdiction of the United States Army and receiving instructions from United States Army Officers. (R. 6, 7). As such Military Police they were each required to and did take an oath to support and defend and bear true faith and allegiance to the Consti-

tution of the United States and to perform their duties as civilian auxiliaries to the military police to protect war material, war premises, and war utilities against all enemies and to obey any orders issued in connection therewith by the President, as Commander in Chief of the Army and Navy of the United States, and by his duly authorized officers. (R. 7). They were subject to the Articles of War and to military law. (R. 7, 11).

Their duties as Military Police were to guard and protect war material, war premises and war utilities from injury or destruction, including the making of arrests, as peace officers, for violations of Federal laws, as well as for violation of orders and regulations issued by military authority. (R. 7). They were charged with the responsibility for the protection of the physical plant and equipment of the Corporation. It was their duty to keep intruders out, to see that the rules and regulations of the Corporation were enforced for the benefit of all concerned and to see that the peace was kept. Their duties were similar to those of a city, county or state police force. (R. 6).

The same union which was certified by the Board for the plant protection force also was the recognized collective bargaining representative for the production and maintenance workers in the same plant and had an agreement with the Corporation covering those workers. (R. 16-33). That contract contained the usual wartime maintenance of membership and union dues check-off clauses. (R. 17).

After the case was remanded by this Court (325 U. S. 838) with instructions to the Circuit Court of Appeals to give consideration to the changed circumstances with respect to the demilitarization of the plant protection force, the parties entered into a stipulation of the facts of said changed circumstances. (R. 114-118).

The stipulation indicated that the plant protection force was demilitarized shortly after May 29, 1944 (R. 114)

but that the police captain was a Deputy Sheriff of Cuyahoga County, Ohio and that all of the other members of the force were commissioned, sworn and bonded as private policemen of the City of Cleveland, Ohio under Section 188 of the Cleveland Municipal Code of 1924, and as such are members of the municipal police force and have and exercise the legal powers of peace officers in their work as plant guards. (R. 115).

It was further stipulated that when on duty, all members of the guard force are required to wear police badges, and uniforms of a military style and are armed with police revolvers and clubs or batons, and when occasion requires, with other arms and police equipment. (R. 115).

Like other peace officers, their principle functions are the protection of the property of the Corporation and its employees from damage, injury, theft or trespass; to maintain peace and good order by demanding and enforcing obedience to the safety and other rules of the Corporation as well as all applicable public laws and ordinances and by preventing and arresting any violation thereof, or any breach of peace in or near the works; to detect and, if possible, prevent crime; to investigate and report, in confidence to their superiors, all crimes, suspected crimes, irregularities and casualties occurring in the works; and to assist in the criminal prosecution of any person who may lawfully be charged with committing or attempting to commit any such crime. (R. 115, 116).

During the calendar year 1945, the guard force actually performed those duties by making numerous arrests for and investigations of crimes, by helping at fires and by apprehending employees found violating Corporation rules and escorting employees from the plant. (R. 116, 117).

For many years the police protection by the regular city police force has not been practical or feasible and the police protection of the works and the enforcement of law,

peace and good order therein has been left wholly to the plant protection force. The work of preventing and extinguishing fires has also been largely left to the guard force. (R. 116).

The guard force performed all of these duties before, during and after their period of militarization. In addition, during their period of militarizaton, they were requred to inform themselves of the contents of various communications published or circulated by authority of the army and their drills were conformed to standards established by the army. (R. 117).

From the foregoing it will be seen that during the entire period involved in this proceeding, the persons in question were police peace officers owing a public duty to the State of Ohio and that for a portion of the time involved they were members of the Armed Forces charged with all of the responsibilities of such employment.

As members of the union, the plant protection employees were required to take the usual oath administered to union candidates and in which they pledged themselves as follows:

> "I do sincerely promise * * * to abide by the laws of this Union; to bear true allegiance to, and keep inviolate the principles of the United Steelworker of America * * * to defend on all occasions and to the extent of my ability the members of our organization. That * * * as the steel workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the organization to do so. * * *"

Ohio General Code Section 4666 provides in part:

> Each officer of the corporation, or of any department * * * thereof, whether elected or appointed as a substitute for a regular officer * * * before entering upon his official duties shall take an oath to support the constitution of the United States and the

> Constitution of Ohio, and an oath that he will faithfully, honestly and impartially discharge the duties of the office. • • •

In the case of *DeRomedis et al vs. Yorkville*, 21 O. N. P. (N. S.) 340 (Jefferson Co. Ct. of Com. Pleas, 1918) it was held that a police officer was an officer within the meaning of the foregoing statute. On page 343 the Court said:

> It is uniformly held that a policeman is not only a municipal officer but a state officer as well.

It is difficult to see, how in time of a strike, a plant guard could be loyal to both his oath as a union member and his oath as a state officer.

Question To Be Discussed

The record presents the following question for discussion:

Should this Court order the enforcement of an order of the National Labor Relations Board requiring the Jones & Laughlin Steel Corporation to recognize and bargain with a union as the collective bargaining representative of its plant guards who during all of the time involved were public peace officers of the State of Ohio and who, during some of the time were also Military Police, when such union is already the collective bargaining representative of the production workers in the same plant and membership in the union carries with it the obligation to strike when requested by the Union?

It is contended that the order should not be enforced.

Summary of Argument

Following is a brief summary of the argument as to why the order of the Board should not be enforced:

1. The plant guards are public peace officers and as such owe their undivided allegiance to the

public.

2. As such public peace officers the plant guards may not assume an incompatible obligation.

3. If they are permitted to become members of and represented by the union their obligation to the union will be incompatible with their obligations as public peace officers.

4. It is against public policy as expressed in the statutes, judicial decisions and public statements of public officials, to permit a public peace officer to assume incompatible obligations.

5. It would be against public policy and inimical to the public safety to enforce the Board's order in this case.

Argument

In the following pages of this brief and under appropriate headings we will detail our argument as to why the Board's order should not be enforced.

The Plant Guards in Question Are Public Peace Officers

The record shows that the captain of the guard force is Deputy Sheriff of Cuyahoga County, Ohio, and that all other members of the force of special policemen of the City of Cleveland, Ohio.

The Ohio constitutional and statutory provisions relating to the duties and responsibilities of Deputy Sheriffs will be found in the appendix.

In the case of *Mitchell vs. Industrial Commission of Ohio*, 57 O. App. 319, 13 N. E. (2d) 736 (1936), the first two syllabi are as follows:

> "A sheriff, by virtue of the provisions of Section 2833, General Code, has authority, in case of emergency, to call persons to his aid in the making of an arrest, and a deputy sheriff has like authority.
>
> "A person called upon verbally by a deputy sheriff to assist in making an arrest, by the words 'in the

name of the law, you are a deputy sheriff,' the person to be arrested being known to the deputy as a dangerous character and the sheriff and other deputies not being at hand, is an 'employee' of the county within the meaning of the Workmen's Compensation Act.''

Ohio General Code Section 4375 reads in part as follows:

> "The director of public safety * * * may commission private policemen, who may not be in the classified list of the department, under such rules and regulations as council prescribes."

Acting under authority of this statute and the ordinance of the City of Cleveland the members of the guard force, other than the captain, were appointed private policemen of that city.

In the case of *New York, Chicago & St. Louis R. R. Co. vs. Fieback,* 87 Ohio St. 254, 100 N. E. 889 (1912), the Supreme Court of Ohio said, beginning on page 264:

> "It appears that John Beattie, for whose conduct the defendant in error seeks to recover damages from the plaintiff in error, was so appointed, commissioned and sworn to perform the duties of a policeman for the plaintiff in error, The New York, Chicago & St. Louis Ry. Co., and was at the time of the acts complained of, authorized so to act. So that, although he was appointed at the request of the railroad company and although his salary was paid by it, he was in fact, at the time of the plaintiff's injury, a public officer; and by the express terms of Section 3428, Revised Statutes (General Code, Section 9151), the railroad company would not be liable for his acts if a municipal corporation would not be liable. Police officers, by whomever appointed or elected are generally regarded as public or state officers deriving their authority from the sovereignty, for the purpose of enforcing the observ-

ance of the law; and for their malfeasance, misfeasance or non-feasance in office the city is not responsible."

That case was followed in *Pennsylvania R. R. Co. vs. Deal*, 116 Ohio St. 408, 156 N. E. 502 (1927).

In the case of *Cleveland vs. Luttner*, 92 Ohio St. 492, 111 N. E. 280 (1915), the Supreme Court of Ohio said on page 494:

"A public officer is a public servant, whether he be a policeman of a municipality or the president of the United States."

It seems clear that in Ohio all of the members of the plant protection force are public peace officers charged with a public duty and responsibility as such.

As Public Peace Officers the Plant Guards Are Not Permitted To Assume an Incompatible Obligation

It is a general rule that public officers may not hold more than one office at the same time if such offices are incompatible with each other. 42 *Amer. Jur.* 935.

In 42 *Amer. Jur.* 936 it is stated:

"Incompatibility of offices exists where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other. This is something more than a physical impossibility to discharge the duties of both offices at the same time. They are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant so that, because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both. It is not an essential ele-

ment of incompatibility of offices at common law that the clash of duty should exist in all or in the greater part of the official functions. If one office is superior to the other in some of its principal or important duties, so that the exercise of such duties may conflict, to the public detriment, with the exercise of other important duties in the subordinate office, then the offices are incompatible. It is immaterial on the question of incompatibility that the party need not and probably will not undertake to act in both offices at the same time. The admitted necessity of such a course is the strongest proof of the incompatibility of the two offices."

The same principle has been applied to police officers. In the case of *Carter vs. Thompson*, 165 Va. 312, 180 S. E. 410, 412, it is stated:

"Police and fire departments are in a class apart. Both are at times charged with the preservation of public order, and for manifold reasons they owe to the public their undivided allegiance."

In the case of *Hutchinson vs. Magee*, 278 Pa. 119, 122 A. 234, it is stated:

"It is generally conceded that association with an organization which, on any occasion or for any purpose, attempts to control the relations of members of either the police or fire departments toward the municipality they undertake to serve, is, in the very nature of things, inconsistent with the discipline which such employment imperatively requires, and therefore must prove subversive of the public service and detrimental to the general welfare; hence we are unable to say the court below erred in not holding the municipal authorities named as defendants abused their power when they acted on this view."

To the same effect is the case of *Fraternal Order of Police vs. Harris*, 306 Mich. 68, 10 N. W. (2d) 310.

The Obligation of the Plant Guards to Their Union Is Incompatible With Their Obligation to the Public

We have already pointed out the inconsistency between the oath of the plant guard as a Military Policeman and his oath of fidelity to the union. We have also called attention to the inconsistency between their oaths as peace officers and their oaths as union members. Having assumed these obligations, it is difficult to see how they could faithfully perform all of these obligations at the same time.

This incompatibility was pointed out by the Sixth Circuit Court of Appeals in its last opinion, *N. L. R. B. vs. Jones & Laughlin Steel Corp.*, 154 F. (2d) 932 on page 935, where the Court said:

> "In case of industrial unrest and strikes on the part of the production employees, the obligations of the plant guards to the municipality and state would be incompatible with their obligations to the union which, since it represents production employees, authorizes and directs the strike."

In the case of *City of Jackson vs McLeod*, —— Miss. ——, 24 So. (2d) 319 (1946), the Court said on page 321:

> "It ought to be conceded by everybody that while a city policeman must perform his duties with courage and intelligence, he must do so without favoritism. Nothing could be more unbecoming to a police department than that it shall be pledged, or otherwise committed in an obligatory manner, to a preference of one group over another when all are paying their salaries, and particularly is this true when the groups are such that disputes between them are liable to arise, which in turn may lead to disorders. And inasmuch as the City Council is elected by the people and made responsible to the people for the proper conduct of every department of the city government, the police employees must be responsible to the council and must be under its direction, free

from the obligation of any other allegiance whatsoever so far as their activities as policemen are concerned."

The Court then cites and quotes from a number of authorities and on page 322 continues:

"And concurring as we do in the above quoted excerpts taken from the courts on the applicable law, nothing further is necessary than now to quote the pledge which each member of the proposed union must take as a feature of his membership: 'I * * * pledge my honor to observe faithfully the constitution and laws of this local of the American Federation of State, County and Municipal Employees and the rules and regulations for the government thereof; not to make public any of the private proceedings of this local; to perform faithfully all the duties assigned to me; to support the products and services of organized labor by making purchases of such products and services; to so conduct myself at all times as not to bring reproach upon my local; and at all times to bear true and faithful allegiance to the American Federation of State, County, and Municipal Employees and to the labor movement in general.'

"When the terms of this pledge and the other facts mentioned herein, all of which are undisputed, are laid alongside the legal principles above set forth it is manifest, as we now think, that the Civil Service Commission had before it a cause upon which reasonable men, acting as commissioners, could reasonably arrive at the conclusion which they did, and this being the case no court or jury should be permitted, or can be permitted, within constitutional limitations, to otherwise adjudge. Had such a pledge, but to the opposite effect, been made to some group, by whatever name called, favoring non-unionism and that the police would in their activities endeavor at all times to advance the cause of non-

unionism it would have been equally objectionable had the Civil Service Commission so held, as doubtless it would."

In the original opinion in this case, *N. L. R. B. vs. Jones & Laughlin Steel Corporation*, 146 F. (2d) 718, the Sixth Circuit Court of Appeals said, beginning on page 722:

"The Board, under Sec. 9(b) had a positive duty to perform in the interest of the public. It must be kept in mind that in time of national peril, the preservation, protection and promotion of the national welfare is the paramount objective; and the Board must select bargaining agents with this in view. It must anticipate that the Union selected as agent would negotiate through individual members who had a common interest with the employees in securing for themselves advantageous agreements with respect to hours, wages and other conditions of employment. It is manifest that these personal interests of the bargainors, as well as the demands made upon them either by the employees or employers might necessarily constitute a serious and embarrassing handicap when it came to the consideration of the interest of the public. When these particular Unions were selected as bargaining agents for the plant protection employees, these employees might in an effort to discharge their duty to their employer find themselves in conflict with other members of their Union over the enforcement of some rule or regulation they were hired to enforce; or upon the other hand, in conflict with the Federal Government because of fealty to the Union at the time of a dispute involving the public interest. We think that the imposition of such strains upon personal allegiance and personal interest would undoubtedly be detrimental to the public interest and to the free flow of commerce."

To permit plant guards to belong to and be represented by the same union that represents the production workers is to say that they can faithfully serve two masters. Whenever one attempts to serve two masters and a conflict arises between them, he is faced with the necessity of either refusing to serve either of his masters or of making a choice between them.

If the Corporation is compelled to bargain with the union as the representative of the plant guards then the union will control their tenure of employment. The union will make the agreement with the Corporation determining the conditions under which the guard shall work and under which he will be permitted to hold his job. The union, by use of its economic force, may compel the Corporation to enter into a closed shop agreement making union membership a condition of employment. If union membership is a condition of employment, then the union can terminate the employment by simply suspending or expelling the guard from the union. Such suspension or expulsion would not only terminate the guard's employment with his present employer but would also prevent him from procuring employment in any other union shop.[1]

[1] For instance: Section 8 of Article 6 of the Constitution of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America provides as follows:

"Section 8: Any Local Union expelling any member for cause shall notify the International Secretary-Treasurer and the latter shall notify all Local Unions of this fact forthwith. A Person who has been suspended or expelled by any Local Union shall not be eligible for membership in any other Local Union until all claims or charges against such person have been satisfactorily settled with the Local Union suspending or expelling and written notice to this effect furnished the Local Union to which such person seeks admission."

That the fear of failure to perform their duty because of a conflict of interests is real and not imaginary has been demonstrated by experience in plants where the dual allegiance exists.[2]

This Court should not enforce the Board order which, if enforced, will place the plant guards in a position requiring them to divide their allegiance between two masters and when conflict arises to choose which of them they will serve.

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[2] Mr. Joseph Larkin, Vice President of Bethlehem Steel Corporation, on April 1, 1943, in testifying before the House Military Affairs Committee stated that at one of the company's plants the guards were represented by the same union as the production workers and that when a guard found one of his fellow union members asleep, instead of reporting the member for his misconduct, called up the head of the union for instructions and was told to forget about it which he did. (R. 11.)

In the matter of *Spicer Manufacturing Corporation*, N. L. R. B. Case No. 8-C-1389 (C-2628), on April 20, 1943, Captain Ralph VanVorce, who was in charge of the Auxiliary Military Police at the Spicer plant, testified as follows, beginning on page 1470 of the record:

"Q. Has the fact that the guards are in the same bargaining unit with the production and maintenance workers affected the discipline of the guards in any way so far as you are concerned? A. I think it does.

Q. Has it interfered with your orders in any way? A. Sometimes.

Q. Can you give us any instances? A. I don't know as I can give you the specific instance.

Mr. Johnstone: I move to strike the questions and answers.

Trial Examiner Batten: Well, can you tell us why it has affected?

The Witness: Some guards, you give them an order to perform a certain duty, and they will go to the bargaining committee to see whether they have to do that or not.

Trial Examiner Batten: Does that interfere with your work, because they go and ask whether they will?

The Witness: Well, it has—

Trial Examiner Batten: Have you ever had a guard refuse to do what you told him to do?

The Witness: I don't know as I can recall any offhand.

Trial Examiner Batten: In other words, if you issue an order to a man, you expect it to be obeyed?

The Witness: That is right.

Trial Examiner Batten: Did you ever have a man tell you he wouldn't do it?

The Witness: I have had them tell me they wouldn't do it unless the Union said it was O.K.

Trial Examiner Batten: You mean they refused to do it until they consulted the Union

The Witness: That is right."

It Is Against Public Policy To Permit Public Peace Officers To Assume Incompatible Obligations

In the case of *Wardell vs. Railroad Co.*, 103 U. S. 651 (1880) the Court said the following on page 658:

> "It is among the rudiments of the law that the same person cannot act for himself and at the same time, with respect to the same matter, as the agent of another whose interests are conflicting. Thus a person cannot be a purchaser of property and at the same time the agent of the vendor. The two positions impose different obligations, and their union would at once raise a conflict between interest and duty; and, 'constituted as humanity is, in the majority of cases duty would be overborne in the struggle.' *Marsh vs. Whitmore*, 21 Wall. 178, 183. The law, therefore, will always condemn the transactions of a party on his own behalf when, in respect to the matter concerned, he is the agent of others, and will relieve against them whenever their enforcement is seasonably resisted."

In the case of *Kintz vs. Harriger*, 99 Ohio St. 240, 124 N. E. 168, (1919) the Court said beginning on page 246:

> "A correct definition, at once concise and comprehensive, of the words 'public policy' has not yet been formulated by our courts. Indeed, the term is as difficult to define with accuracy as the words 'fraud,' 'equity,' 'welfare.'
>
> In substance, it may be generally said to be the community common sense and common conscience extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like. It is that general and well-settled public opinion relating to man's plain, palpable duty to his fellow man, that has due regard to all circumstances of each particular situation.
>
> Our written public policies are put into our constitutions, our statutes, and ordinances, but our unwritten public policies rest largely in judicial judgment and public opinion."

We, therefore, look to our statutes, judicial decisions and the public statements of our civic leaders to determine the public policy of the nation. In considering the public policy involved in this proceeding we must remember that the obligation which the plant guards take as union members requires them to "cease work at any time" they are "called upon by the organization to do so."

Public Policy Expressed in Federal Statutes

Recently Congress passed a number of acts appropriating funds for various purposes. Each of those acts contained provisions similar to the following.

> "No part of any appropriation contained in this Act shall be used to pay the salary or wages of any person who engages in a strike against the Government of the United States or who is a member of an organization of Government employees that asserts the right to strike against the Government of the United States, or who advocates, or is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence: *Provided*, That for the purposes hereof an affidavit shall be considered *prima facie* evidence that the person making the affidavit has not contrary to the provisions of this section engaged in a strike against the Government of the United States, is not a member of an organization of Government employees that asserts the right to strike against the Government of the United States, or that such person does not advocate, and is not a member of an organization that advocates, the overthrow of the Government of the United States by force or violence: *Provided further*, That any person who engages in a strike against the Government of the United States or who is a member of an organization of Government employees that asserts the right to strike against the Government of the United States, or who

advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence and accepts employment the salary or wages for which are paid from any appropriation contained in this Act shall be guilty of a felony and, upon conviction, shall be fined not more than $1,000 or imprisoned for not more than one year, or both: *Provided further*, That the above penalty clause shall be in addition to, and not in substitution for, any other provisions of existing law."[3]

The *National Labor Relations Act* in paragraph 2 of Section 2, specifically excludes the states and political subdivisions thereof from the term "employer." That paragraph reads as follows:

"The term 'employer' includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

[3] Departments of State, Justice, Commerce, and the Judiciary Appropriation Act, 1947, Public Law 490, Title V, Sec. 501; Public Law 492, An Act making appropriations for the Navy Department and the Naval Service for the fiscal year ending June 30, 1947, and for other purposes, Section 109; Public Law 493, District of Columbia Appropriations Act, 1947, Sec. 3; Public Law 518, Treasury and Post Office Departments Appropriation Act 1947, Title III, Sec. 301; Public Law 519, Government Corporations Appropriations Act, 1947, Sec. 305; Public Law 521, Third Deficiency Appropriation Act, 1946, Title IV, Sec. 401; Public Law 549, Labor-Federal Security Appropriations Act, 1947, Title VII, Sec. 701; Public Law 665, First Supplemental Appropriation Act, 1947, Title III, Sec. 301.

It follows that employees of states or their political subdivisions are not covered by the Act. The counties and cities are political subdivisions of the state. *State ex rel. vs. Price*, 101 Ohio St. 50, 128 N. E. 173. Certainly, while acting in their capacities as Military Police, Deputy Sheriffs, or publicly commissioned Private Policemen, the plant guards are engaged in public functions and are in the public employ.[4] They are, therefore, not within the coverage of the Act.

Federal laws for the District of Columbia prohibit members of the metropolitan police of the distict from affiliating with any organization which holds, claims or uses the strike to enforce its demands, and makes punishable their participation in a strike.[5] Members of the fire department of the District of Columbia are forbidden to directly or indirectly engage in any strike of such department, and their participation is punishable.[6]

The *Lloyd-LaFollette Act*, 5 U. S. C. 652 also limits the right of postal employees to join a union which imposes an obligation to strike. That Act provides in part as follows:

> "Membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by

[4] *New York, Chicago & St. Louis R. R. Co. vs. Fieback*, 87 Ohio St. 254, 100 N. E. 889 (1912); *Pennsylvania R. R. Co. vs. Deal*, 116 Ohio St. 408, 156 N. E. 502 (1927); *Cleveland vs. Luttner*, 92 Ohio St. 492, 111 N. E. 280 (1915); *Mitchell vs. Industrial Commission of Ohio*, 57 Ohio App. 319, 13 N. E. (2d) 736 (1936).

[5] 41 Stat. 364 (1919); D. C. Code (1940) Sec. 4-125.

[6] Act of Jan. 24, 1920, 41 Stat. 398 as amended by Act of July 31, 1939, 53 Stat. 1143; D. C. Code 1940, Sec. 4-407.

any person or groups of persons in said Postal Service, or the presenting by any such person or groups or (of) persons of any grievance or grievances to the Congress or any Member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service."

In view of the foregoing Congressional expressions of public policy it seems inconceivable that Congress intended that a unit of plant guards, such as we have in this case, should be permitted to join or be represented by a union imposing an obligation to strike and which represents the production workers.

Public Policy Expressed in Laws, Ordinances and Regulations of Other Jurisdictions

An excellent discussion of Constitutional and Statutory Law relating to collective bargaining is found in *"Labor Unions and Municipal Employe Law"* by Charles S. Rhyne (1946), published by National Institute of Municipal Law Officers. Beginning on page 72 he says the following:

"A considerable number of the state have enacted state labor relations acts, as the Federal Government has enacted a National Labor Relations Act, to guarantee and regulate collective bargaining and eliminate unfair labor practices. However, none of the state labor relations acts purport in language to govern public employment and most of them as well as the Federal Act, expressly exclude the state and its political subdivisions as an 'employer' or the applicability of the terms of the act to employes of the state or its political subdivisions. In this connection, the United States Supreme Court held in the *Corsi* case that it was not a denial of equal protection of the laws that the New York labor relations act extended collective bargaining to organizations of private employes but excluded organizations of

public employes. As a consequence, such labor relations statutes with apparent legal propriety do not control government employer-employe relationships. Left open is the question of whether the exclusion of government is in recognition of its inherent exemption from the legislative power to subject the sovereign to collective bargaining with its own employes, or simply an exercise of legislative discretion which can be changed by ordinary amendatory legislation without constitutional amendment."

Beginning on page 73 he calls attention to various state statutes relating to the subject of collective bargaining. Among those listed are statutes of the State of Washington authorizing cities of the first class owning public utilities to bargain wth such employees through their union representatives; Ohio, authorizing the operating officers of a publicly owned utility, which when privately owned, had a contract with a labor union, to continue to contract with the union; Utah, permitting municipal officers to make deductions of union dues from salaries of employees voluntarily authorizing the deduction.

Beginning on page 75 he quotes a resolution adopted by the legislature of Alabama on July 10, 1940 and opposing unionization of state employees.

On page 76 he quotes the following resolution adopted by the Virginia Legislature on February 8, 1946:

"Be it resolved by the Senate of Virginia, the House of Delegates concurring, as follows:

"1. It is contrary to the public policy of Virginia for any State, county, or municipal officer or agent to be vested with or possess any authority to recognize any labor union as a representative of any public officers or employes, or to negotiate with any such union or its agents with respect to any matter relating to them or their employment or service.

"2. Nothing in this resolution shall be construed to prevent employes of the State, its political subdi-

visions, or any governmental agency of any of them from forming organizations, not affiliated with any labor union for the purpose of discussing with the employing agency the conditions of their employment, but not claiming the right to strike."

Beginning on the same page, he quotes a Virginia Statute penalizing public employees who strike.

Beginning on page 79 he discusses legislation enacted by the province of Quebec, Canada, in 1944 giving public employees a limited right to bargain collectively. However, it is significant that the legislation provides that the provincial and muncipal police are prohibited from becomng members of an association which is not exclusively made up of persons of the same category or which is affiliated with another organization. Strikes are prohibited under penalty.

In 1919 a police strike occurred in London. As a result, the English Government passed a law forbidding the police in the future to belong to any trade union, other than the Police Federation, or to participate in any trade dispute.[7]

On page 81 of his book Mr. Rhyne says:

"The attorneys general of at least fifteen states have had occasion to render opinions or rulings, which to the extent known, are summarized here, and these opinions are also set forth in full in the appendices. The majority of these opinions regard labor union contracts between municipalities or other units of government and unions representing governmental employes as unauthorized in law. Notable exceptions are the California opinions, and possibly the Utah and Wisconsin opinions which distinguish between mandatory and voluntary consummation of labor union contracts. The Nebraska opinion is in-

[7] *Halsbury's Laws of England*, Second Edition, Vol. 25, p. 343; Warren B. Catlin, *"The Labor Problem in the United States and Great Britain"* (1926), p. 494.

> clined to recognize an existing right of 'limited collective bargaining' shorn of all economic sanctions and pressures exerted by employes, and the Washington opinion recognizes the power of a utility district, with broad statutory powers to contract with a union."

It is concluded that because of their status as guardians of the public safety, police officers occupy a peculiar position insofar as their relationship to labor unions is concerned and that public policy forbids that they be permitted to be members of or represented by the same union which represents other workers.

Public Policy As Expressed in Judicial Decisions

In the case of *Railway Mail Association vs. Corsi*, 326 U. S. 88 (1945), this Court said the following on page 95:

> "Under customary practices government employees do not bargain collectively with their employer."

In the case of *Hagerman vs. Dayton*, 147 Ohio St. 313, decided by the Supreme Court of Ohio on January 22, 1947, the Court held invalid a municipal ordinance authorizing a voluntary check-off of union dues of public employees. On page 327 the Court said:

> "Under Section 6346-13, General Code, as it stood at the time of the passage of Ordinances No. 15776 and No. 15937, any assignment of, or order for, wages or salary was invalid in the absence of a contract such as described in Section 6346-13, General Code. We are of the opinion that a municipal corporation of the State of Ohio does not come within the meaning of 'employers' as used in Section 6346-13, General Code. We are also of the opinion that civil service appointees do not come within the definition of 'employes' as used in such section."

On page 328 the Court said:

"There is no municipal purpose served by the check-off of wages of civil service employees. Counsel for appellees argue that a check-off is a convenience to both the municipal appointee and the labor union. We must be realistic and take judicial notice, or what is generally known, that the check-off is a means of maintaining membership. Indeed, the record in this case shows that each so-called contract member is required to give a cognovit note for twenty months dues in advance and these proposed check-off payments are to be applied on such notes. The check-off is contrary to the spirit and purpose of the civil service laws of the state."

Beginning on the same page it is further stated:

"Under this section of the Constitution and the laws enacted pursuant thereto, labor unions have no function which they may discharge in connection with civil service appointees."

On page 329 the Court said:

"The laws of this state, the regulations of the civil service commissions, state and municipal, and the valid ordinances of the particular municipality cover fully all questions of wages, hours of work and conditions of employment affecting civil service appointees. Municipal civil service appointees are to be appraised and promotions are to be made in individual cases according to merit, fitness and seniority. There is no authority for the delegation either by the municipality or the civil service appointees of any functions to any organization of any kind. Each tub must stand on its own bottom. The law provides for the election and appointment of officials whose duties would be interfered with by the intrusion of outside organizations. Nothing said herein is intended to limit free speech but it is intended to limit interference by *organizations* with the duties of duly elected and appointed officials."

In the case of *Fraternal Order of Police vs. Harris*, 306 Mich. 68, 10 N. W. (2d) 310 (1943), it is stated beginning at page 312:

> "The constitution and by-laws of plaintiff's national, state and local organizations which were received in evidence provide in effect that citizens may become associate members upon payment of dues of not less than $5 per year, and such associate members will be furnished 'a membership card and car emblem.' One would be naive, indeed, to assume that such automobile emblem did not carry with it the intimation of special privileges to associate members. This of itself is enough to require the determination that the existence of plaintiff organization within the law enforcement body of a municipality is contrary to public policy."

In the case of *McNatt vs. Lauther*, 223 S. W. 503 (Tex. Civ. App., 1920), the Court sustained the discharge of a city fireman for disobedience of a rule against joining a labor union. On page 506 the Court said:

> "The board of commissioners of the city of Dallas had the interest of the public, as well as the employes of the city, to consider. In addition to the considerations stated in the quotations above referred to, the commissioners may have taken into consideration the effect of the increased probability of strikes by the policemen or firemen of the city, as a body, if such employes were permitted to become members of an organization which might bind them to act as a body in such matters. The dire consequences of such a strike has been exemplified in the comparatively recent strike of the policemen of the city of Boston. The adoption of the ordinance referred to or similar rules and regulations, may have been the result of a purpose to minimize, as far as possible, the probability of some such calamity in the city of Dallas."

Public Policy As Expressed in Statements of Public Officials

Beginning on page 106 of his book on "*Labor Unions and Municipal Employe Law,*" Mr. Rhyne discusses the Boston Police Strike of 1919. It will be recalled that it was his handling of this incident which brought Calvin Coolidge before the public and had much to do with his later becoming President of the United States. In taking action to stop the strike, *Calvin Coolidge* said:

> "There is no right to strike against the public safety by anybody, anywhere, at any time."

In commenting on the same incident, President *Woodrow Wilson* termed the strike "an intolerable crime against civilization."[8]

In a letter written on August 16, 1937, to Mr. Luther C. Steward, President of National Federation of Federal Employees, President *Franklin D. Roosevelt* said:

> "Particularly, I want to emphasize my conviction that militant tactics have no place in the functions of any organization of government employes. Upon employes in the federal service rests the obligation to serve the whole people, whose interests and welfare require orderliness and continuity in the conduct of government activities. This obligation is paramount. Since their own services have to do with the functioning of the government, a strike of public employes manifests nothing less than an intent on their part to prevent or obstruct the operations of government until their demands are satisfied. Such action, looking toward the paralysis of government by those who have sworn to support it, is unthinkable and intolerable."[9]

[8] Rhyne: "*Labor Unions and Municipal Employe Law,*" p. 107.

[9] Rhyne: "*Labor Unions and Municipal Employe Law,*" p. 437.

In July of 1939, when the W.P.A. strikes were in progress the then Attorney General, *Frank Murphy* (now Mr. Justice Murphy), announced to the press that public employees did not have the right to strike. When asked whether he would differentiate between the fundamental and the proprietary activities of the government, the Attorney General remarked that a somewhat different situation prevailed as between the two activities but that "there ought to be no strikes against the government."[10]

On April 7, 1941, *F. H. LaGuardia*, then Mayor of New York City, in a letter to the Chairman of the Board of Transportation said:

> "The city does not and cannot recognize the right of any group to strike against the city."[11]

In an opinion dated April 25, 1944, Chicago Corporation Counsel *Barnet Hodes* said the following:

> "The police officers individually or collectively have no right to strike for any reason at any time under any circumstances."[12]

In an opinion dated November 27, 1945, *George L. Stemmler*, City Counselor of St. Louis, Missouri, stated:

> "Inherent in the concept of a union is the idea of a group separate and apart and, in a sense, antagonistic to its employer. The labor union has, as the very essence of its being, the basic principle that the rights of its members are in contraposition to the rights and interests of the employer and that its members must band together for concerted action against the employer. When it is considered that the police force is an integral part of 'the people' themselves, it will be readily apparent how utterly incongruous would be any attempt by the members

[10] *New York Times*, July 14, 1939, page 4, column 2.

[11] Rhyne: *"Labor Unions and Municipal Employe Law,"* page 193.

[12] Rhyne: *"Labor Unions and Municipal Employe Law,"* page 100.

of the police force to set themselves up as a group independent of, or separated from, or distinguished from, 'the people' as a whole.

"Implicit in the idea of a union is the idea of concerted action to enforce its demands; that is, the right to strike. The right to strike against 'the people' themselves is repulsive even to those now attempting to unionize the police force as evidenced by their attempted emasculation of the union by the provision that it shall not have the right to strike.

"It is my opinion, however, that, in a matter so vitally affecting the welfare of the people as a whole, we must, above all things, be practical and exercise the utmost of common sense. As practical individuals we know that, regardless of this attempt to forbid strikes, there would always be present the incipient threat of a strike against 'the people.'

"I realize that the Board is entirely sympathetic to the trend of the times looking toward the dignifying of the status of the individual as such. However, the banding together of the members of the police force in a labor union is so foreign to the fundamental conception of the nature and characteristics of a police force that it is, in my opinion, the duty of your Board to take the position that membership in a labor union is just grounds for disciplinary action as outlined in your Police Manual."[13]

Under date of March 6, 1946, Mr. *Fletcher Bowron*, Mayor of Los Angeles, California, wrote a letter to the City Council in which he said the following:

"I feel that a police union has no place in the organization of the Police Department of this city, or in any government, and its existence, certainly its official recognition, is contrary to sound public policy and against the public interest.

"A labor union of peace officers is repugnant to the very principles of democracy, the form and pur-

[13] Rhyne: *"Labor Unions and Municipal Employe Law,"* page 364.

pose of representative free government. Unsettled conditions and numerous strikes, with accompanying violence, in various cities throughout the country, including recent strikes in Los Angeles, have demonstrated to every unbiased and fairminded citizen that police officers, sworn to support the Constitution of the United States and of this state, and whose duty it is to uphold and enforce the law equally and without fear or favor towards all, must be neutral in fact as well as in appearance in all matters where organized labor is involved.

"Los Angeles police officers have not failed in their duty, but the example of other police forces which are unionized has demonstrated that peace officers should not be members of a labor union. After investigation of facts relating to a so-called jurisdictional strike in this county (but in which all acts of violence occurred outside of the limits of the City of Los Angeles, a subcommittee of the Assembly Committee on Governmental Efficiency and Economy of the California Legislature reached the conclusion that there had been a serious breakdown in the maintenance of law and order and recommended 'that the Legislature enact a law prohibiting a peace officer's being a member of any labor union.' This recommendation could not be considered at the recent special session of the Legislature, and if a statute is enacted at the next regular session, we may not expect a state law on this subject for a year and half. Moreover, in this chartered city, the employment, regulation and discharge of police officers comes within the scope of a municipal affair and therefore may not be controlled by general laws of the state.

"I deem it proper for the City of Los Angeles to fix and determine its own policy in this matter and I urge the City Council to support me, as the executive officer of the city, in the administrative policy which I propose to put into effect, which is as follows: *that no police officer of the Los Angeles Police Department shall be a member of any labor union.*"[14]

[14] Rhyne: *"Labor Unions and Municipal Employe Law,"* page 311.

In October, 1946, Mr. *George N. Schoonmaker,* City Manager of Toledo, Ohio, made the following statement in a letter to union officials:

> "You recently inquired of me as to my attitude if you undertook to organize the members of the police department into a union to be affiliated with the American Federation of Labor.
>
> "It is generally conceded that association by members of police departments with any organization which on any occasion or for any purpose might attempt to control them in their relations toward the public they undertake to serve, is inconsistent with the discipline which their employment imperatively requires, and therefore must prove subversive of the public service and detrimental to the general welfare. This being so, I disapprove of the attempt of anyone to organize the members of the department into a union in the sense that employees of other kinds are joined together in such organizations.
>
> "That there may be no doubt of my position, I am making this letter public with the added statement that I am instructing the director of public safety to forbid members of the department to enter into such an organization."[15]

It is true that the foregoing statements are directed to the unionization of full time public employees. However, they apply with equal force to the unionization of any peace officer who has the public duty of preserving the peace. It is clear that the weight of public opinion is against permitting peace officers to be represented by a union, particularly a union which already represents other employees having conflicting interests and which imposes upon them the obligation to strike.

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[15] *Toledo Blade,* October 7, 1946, page 15, column 8.

It Would Be Against Public Policy To Enforce the Board's Order in this Case

We have shown from the foregoing statutes, judicial decisions and statements of public officials that it is generally agreed that it is against public policy to permit strikes by public employees, and particularly those whose duty it is to protect the public safety. We have also shown that the duties of the plant guards are public duties relating to the public safety. We have also pointed out that the obligations which the plant guards are required to take when becoming members of the union imposes upon them the duty to strike when called upon to do so by the union. We have also shown that in the performance of their public functions as peace officers they are, in effect, public employees and as such exempt from the coverage of the Act. It is clear that, when they are performing their monitorial duties, they are also acting in the interests of their employer and are therefore employers within paragraph 2 of Section 2 of the Act. It is clear that it was never the intent of Congress to include public peace officers within the coverage of the Act. It, therefore, seems clear that it is against public policy to enforce the Board order, which if enforced, would give the plant guards the right to bargain collectively through the same union representing the production workers which necessarily carries with it the right to strike in their own interests and the duty to strike when called upon by the union which represents them.

If it be contended that the right to organize and be represented by the same union as that which represents the production workers does not necessarily carry with it the right to strike, then we submit that such a contention must be considered "in light of the realities of the industrial world"[16] and, when so considered, we cannot conceive such workers exercising one right without exercising the other.

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[16] *Anderson vs. Mt. Clemens Pottery Co.*, — U. S. —, 66 S. Ct. 1187, 1195 (1946).

If it be contended that the plant guards should not be asked to give up their rights to bargain collectively or to take concerted action to protect their own interests, then we call the Court's attention to the fact that public peace officers have never had that right.

In the case of *McAuliffe vs. Mayor*, 155 Mass. 216, 29 N. E. 517 (1892), Holmes, J., speaking for the Court, said on page 517:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him."

So in this case, when the plant guards accepted employment as such, they waived whatever rights they otherwise would have had to join and be represented by the union.

In the case of *Brownell vs. Russell*, 76 Vt. 326, 57 A. 103 (1904), the Court said on page 104:

> "We think the removal of the police force from the field of active politics is calculated to promote the efficiency of the force and the purity of municipal government, and that the rule adopted imposes no greater restriction than is reasonably necessary to the accomplishment of this purpose."

In the case of *Coane vs. Geary*, 298 Ill. App. 199, 18 N. E. (2d) 719 (1939), the Court beginning on page 722, quoted with approval from a lower court opinion as follows:

> "A police force is peculiar, *sui generis*, you may say, in its formation and in its relation to the city government. It is practically an organized force resembling in many respects a military force, organ-

ized under the laws of the United States and equally as important as to the functions it is required to perform.

"It is not an ordinary branch of the executive government like the mayor's office, even, your water department, the comptroller's department, the health department, even; but, as I say, it is peculiar to itself, and to look at it in the same light that other branches of the executive department are regarded would be a mistake in a judicial decision. It is a department which requires that the members of it shall surrender their individual opinion and power to act, and submit to that of the controlling head just as much as the common soldier must surrender his own opinion and power of action to that of his commanding officer. And there is the same necessity of discipline, of regulation existing in the police department that exists in regard to the military department."

In the case of *Fraternal Order of Police vs. Harris*, 308 Mich. 68, 10 N. W. (2d) 310 (1943), the Court said on page 312:

"Those who serve the public, either as the makers of the law, the interpreters of the law, or those who enforce the law, must necessarily surrender, while acting in such capacity, some of their presumed private rights."

To say that the order of the Board shall be enforced is to say that the right of individuals to join together for the purpose of collective bargaining is paramount to the public interest. The right of workers to self-organization and to bargain collectively through representatives of their own choosing was only one of the objectives which the National Labor Relations Act was designed to protect. To say that the protection of such right is paramount to all other rights and objectives would be to interpret the Act with that single-mindedness which this Court so heartily

condemned in *Southern Steamship Co. vs. N. L. R. B.*, 316 U. S. 31 (1942).

In the case of *N. L. R. B. vs. E. C. Atkins & Co.*, 147 F. (2d) 730 (C. C. A. 7, 1945), the Court well said on page 742:

> "A more cogent reason, however, why enforcement should not be allowed is that to do so would be or be likely to be inimical to the public welfare. The Board in its order entirely ignores the unusual status occupied by members of the plant guard by reason of their enrollment for service with the military. As heretofore shown, they are largely if not entirely under the control and direction of the War Department. They wear the uniform of a soldier, owe the same allegiance, receive their authority and commands from the same source, are enlisted for the duration of the war for service with the Army, and are engaged in the performance of a service essential to the successful prosecution of the war."

In the case of *Church of the Holy Trinity vs. United States*, 143 U. S. 457 (1892), it is said on page 459:

> "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers."

If it be successfully contended that the unionization of plant guards is within the letter of the statute, then certainly it is not within its spirit or within the intention of Congress and, therefore, it would be against public policy to enforce the order of the Board.

Respectfully submitted,

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APPENDIX

OHIO CONSTITUTIONAL AND STATUTORY PROVISIONS RELATING TO DUTIES AND RESPONSIBILITIES OF DEPUTY SHERIFFS

Under the laws of Ohio, deputy sheriffs are peace officers charged with public responsibilities.

Section 7 of Article XV, of the Constitution of Ohio, provides as follows:

> "Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of this state, and also an oath of office."

Following are the provisions of the *Ohio General Code* relating to this subject:

> "*Section 2. All officers must take an oath of office.* Each person chosen or appointed to an office under the constitution or laws of the state, and each deputy or clerk of such officer, shall take an oath of office before entering upon the discharge of his duties. The failure to take such oath shall not affect his liability or the liability of his sureties."
>
> "*Section 3. Oath of office of judges and other officers.* The oath of office of each judge of a court of record shall be to support the constitution of the United States and the constitution of this state, to administer justice without respect to persons, and faithfully and impartially to discharge and perform all the duties incumbent on him as such judge, according to the best of his ability and understanding. The oath of office of every other officer, deputy or clerk, shall be to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of his office."

"*Section 9. Deputies and clerks, their terms, etc.* A deputy, when duly qualified, may perform all and singular the duties of his principal. A deputy or clerk, appointed in pursuance of law, shall hold the appointment only during the pleasure of the officer appointing him. The principal may take from his deputy or clerk a bond, with sureties, conditioned for the faithful performance of the duties of the appointment. In all cases the principal shall be answerable for the neglect or misconduct in office of his deputy or clerk."

"*Section 2830. Deputy Sheriffs.* The sheriff may appoint in writing one or more deputies. If such appointment is approved by a judge of the court of common pleas of the subdivision in which the county of the sheriff is situated, such approval at the time it is made, shall be indorsed on such writing by the judge. Thereupon such writing and indorsement shall be filed by the sheriff with the clerk of his county, who shall duly enter it upon the journal of such court. The clerk's fees therefor shall be paid by the sheriff. Each deputy so appointed shall be a qualified elector of such county. No justice of the peace or mayor shall be appointed such deputy."

"*Section 2831. Responsible for conduct of deputies.* The sheriff shall be responsible for neglect of duty or misconduct in office of each of his deputies."

"*Section 2833. General powers and duties of the sheriff.* Each sheriff shall preserve the public peace and cause all persons guilty of breach thereof, within his knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the common pleas court of the proper county and commit them to jail in case of refusal. He shall return a transcript of all his proceedings with the recognizance so taken to such court and shall execute all warrants, writs and other process to him directed by proper and lawful authority. He shall attend upon the common pleas court

and the court of appeals during their sessions, and, when required, upon the probate court. In the execution of the duties required of him by law, the sheriff may call to his aid such person or persons or power of the county as may be necessary. Under the direction and control of the county commissioner, he shall have charge of the court house."

"*Section 2834. Duty to execute and return process.* The sheriff shall execute every summons, order or other process, make return thereof as required by law and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law."

"*Section 12819. Carrying of concealed weapons prohibited; penalty.* Whoever carries a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person shall be fined not to exceed five hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than six months, or imprisoned in the penitentiary not less than one year nor more than three years. Provided, however, that this act (G. C. Sec. 12819) shall not affect the right of sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables, and special officers as provided by sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed when on duty. Provided further, that it shall be lawful for deputy sheriffs and specially appointed police officers, except as are appointed or called into service by virtue of the authority of said sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed if they first give bond to the state of Ohio, to be approved by the clerk of the court of common pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them; and any person injured by such improper use may have recourse on said bond."

"*Section 13432-1. Officer may arrest on view.* A sheriff, deputy sheriff, marshal, deputy marshal, watchman or police officer, herein designated as 'peace officers' shall arrest and detain a person found violating a law of this state, or an ordinance of a city or village, until a warrant can be obtained.

A constable within the limits of the township in which said constable has been appointed or elected, shall arrest and detain a person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained."

"*Section 13432-3. Duty of peace officer arresting without warrant.* When a peace officer has arrested a person without a warrant, he must without unnecessary delay, take the person arrested before a court or magistrate having jurisdiction of the offense, and must make or cause to be made before such court or magistrate a complaint stating the offense for which the person was arrested."

"*Section 13432-9. When warrant shall issue.* When an affidavit charging a person with the commission of an offense is filed with a judge, clerk or magistrate, if he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused; if the offense charged is a violation of the laws of the state, such warrant may be directed to and executed by any officer named in Section 1 of this chapter, but if the offense charged is a violation of the ordinance or regulation of a municipal corporation, such process shall be directed to and executed by the officers of such corporation."

"*Section 13432-24. Power of arrest, how affected.* Nothing in this chapter shall be deemed or construed to affect or modify the power of arrest vested by law in other persons or officers than those named in section 1 of this chapter."